
(2004) 05 AHC CK 0053
In the Allahabad High Court
Case No : Writ Petition No. 677 (S/B) of 2004

Smt. Vijay Laxmi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-05-2004

Acts Referred:

Uttar Pradesh Regularization of Ad hoc Appointments (On Posts outside the purview of the Public Service Commission) (Amendment) Rules, 2001 — Rule 4(1)

Citation : (2004) 4 AWC 3534

Hon'ble Judges : Pradeep Kant, J;K.S. Rakhra, J

Bench : Division Bench

Advocate : Sandeep Dixit, for the Appellant; Rakesh Nigam and C.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant and K.S. Rakhra, JJ.—Heard the learned counsel for the petitioner Sri Sandeep Dixit and Sri Rakesh Nigam for the State.

2. Admittedly, the petitioner's husband, who was appointed on ad hoc basis on the post of Medical Officer in the State Ayurveda Evam Unani Chikitsa Sewa Samvarg, died prior to the enforcement of the U. P. Regularisation of Ad hoc Appointment (on the posts within the purview of the Public Service Commission) Rules, 2001. These rules have come into force on 20.12.2001, whereas the husband of the petitioner died on 3.5.2000. On the "death of the, husband of the petitioner, the petitioner was sanctioned family pension at the rate of Rs. 4,825 per month and this pension was paid till June, 2001. It appears that thereafter a complaint was made by one Dr. Misra saying that the petitioner was not entitled for family pension since the matter of regularisation of services of the husband of the petitioner could not be finalised in his life time and the petitioner's husband thus, being an ad hoc appointee, the pension should not be paid to her. The pension was thus stopped from June, 2001, on the basis of the aforesaid complaint by the Directorate of Pension, communicating vide letter dated

25.6.2001. Since the petitioner was not paid family pension thereafter, she approached this Court by filing Writ Petition No. 10062 of 2002 at Allahabad, which was disposed of vide order dated 11.3.2002 saying that the petitioner's representation be decided after affording opportunity of hearing to the petitioner within two months. It was thereafter that the present order impugned dated 6.7.2002 (Annexure- 6A) has been passed, holding that the petitioner's husband since was only an ad hoc appointee and his services could not be regularised as he was not covered by the Regularisation Rules of 2001, he was not entitled for pension inasmuch as on the date of enforcement of the said Rules, he was not in service. Aggrieved by the aforesaid decision, the present petition has been filed.

3. Sri Sandeep Dixit, while making challenge to the aforesaid order, has raised a plea that the sub-rule (1) of Rule 4 of the aforesaid Rules, being substituted by means of the third amendment Rules of 2001 in so far it requires that the ad hoc appointee must be continuing in service on the date of the commencement of the Rules, is arbitrarily and discriminatory and, therefore, is hit by the provisions of Articles 14 and 16 of the Constitution. In support of his submission, the learned counsel has argued that the cut off date which has been fixed for applicability of the aforesaid Rules would mean that the persons, who have died one day after the cut off date would be entitled for being considered for regularisation and the persons, who have unfortunately died even a day before, would be deprived of such consideration. The argument lacks substance. His further argument is that requirement of the ad hoc appointee being in service on the date of commencement of the Rules, would defeat the purpose of enactment of the Rules, and that all those ad hoc appointees, who have to their credit three years of service and who are possessed of the qualification prescribed for the post on the date of appointment and fulfil all other conditions, should be considered for regularisation.

4. These are two aspects of the matter. So far the fixation of a cut off date under the Regularisation Rules is concerned, the controversy is no more open. The State has to fix a date, as all the persons, who have been appointed on ad hoc basis, cannot be allowed to be regularised, without fixing any cut off date. It is also to be taken note of, that this cut off date has been changed by the State Government at different intervals, initially when the Rules were promulgated the cut off date was 1.1.1977. Thereafter, It was extended to 1.5.1983 and then to 1.10.1986. Now by means of the present amendment, it has been extended to 30.6.1998. The fixation of cut off date cannot be said to be discriminatory or arbitrary, as has been observed by the Apex Court in the case of State of Gujarat Vs. Raghunath Vamanrao Baxi, ,

5. The argument that the petitioner's husband fulfilled all the qualifications as given in sub-rule (1) of Rule 4, except that he was not alive on the date of enforcement of the Rules and, therefore, he cannot be said to be in service on that date, but otherwise he was entitled to be treated as regular employee as he

has put in three years" service, cannot be supported by any Rule. Merely putting service of three years that Too on ad hoc basis would not mean that such an Incumbent would be deemed to be regularised or would attain the status better than the status of an ad hoc appointee. Regularisation in service can be done of an employee who is in service. In case prior to the coming into force of Regularisation Rules, the incumbent, namely," the ad hoc appointee ceases to be in employment of the Government or the department concerned either by way of termination of his services, dismissal, removal, resignation or death, such ad hoc appointee cannot claim any regularisation.

6. The term regularisation itself indicates that the ad hoc appointments may be irregular at the initial stages but the conditions mentioned in the Rules, if are satisfied, ad hoc appointees can be regularised in service. If the Incumbent is not in service on the date when his regularisation is to be considered, there would be no occasion for the Government to regularise the services of such an incumbent.

7. It is unfortunate that in the case of the petitioner, her husband died but there may be cases where services of the ad hoc appointees have been terminated or he himself resigned from service. If the argument of the learned counsel for the petitioner is accepted that simply because on the date of appointment on ad hoc basis, the incumbent was having requisite qualification and that he had completed three years service, " therefore, he is entitled for being considered for regularisation then all such appointees who do not remain in service on the date of commencement of the Rules, for any reason either by way of termination of his services, dismissal, removal or resignation whatsoever, apart from death, would also claim that they should be considered for regularisation. For considering regularisation in service, it is essential even otherwise that the person must be in service. A person who ceases to be an employee of the State Government ceases to hold any relationship of master and servant, the question of regularisation of his services can never arise.

8. It is also to be taken note of, that even if an employee fulfils all the eligibility conditions, for seeking regularisation in service as per rules, he cannot be deemed to have been regularised, unless, the matter is considered and regularisation order is passed by the authority competent. There is no provision under the Rules, for deemed regularisation in service or automatic regularisation. For this reason also, the requirement of the employee to be in service on the date of enforcement of the Rules, besides the fulfilment of other conditions given under the rule, can neither be said to be discriminatory nor arbitrary.

9. Learned counsel for the petitioner has lastly submitted that the amount of pension which has already been paid to the petitioner, be directed not to be realised from her, as no fault can be attributed to her for getting the said pension. There is no such order of the State Government for making any recovery of the amount paid but looking to the facts and circumstances of the case where no fault can be attributed to the petitioner for getting the amount of pension, we direct that the money already paid to the petitioner shall not be

asked to be refunded by her.

10. With the aforesaid direction, the writ petition is dismissed.